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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendments of Parts 32, 36, 61, 64 and 69 of the Commission's Rules to Establish and Implement Regulatory Procedures for Video Dialtone Service	)	RM-8221

Comments

of

The Southern New England Telephone Company

SUMMARY

Comments of The Southern New England Telephone Company

RM-8221 May 21, 1993

The Southern New England Telephone Company (SNET) encourages the Commission to maintain its vision of video dialtone (VDT), and to keep its initiatives moving forward. The instant Petition should be denied because evolving VDT markets and technologies should not be bogged down at this early stage with the sweeping examinations of the rules proposed by Petitioners. The Commission should continue to maintain that regulatory flexibility is required during this early stage of VDT.

The Petitioners' request that pending VDT applications be held in abeyance should not be adopted. Petitioners have not demonstrated, with any legal precedent or other sustainable rationale, why a carrier should be denied its right to apply for the requisite authority to construct and operate a VDT system. The Commission should not hold in abeyance any VDT Section 214 Applications duly filed in compliance with its rules.

The gigantic investigation of every major section of the rules that Petitioners request is not warranted at this time, due to the minuscule size of VDT trials. The Commission has indicated that it will undertake a comprehensive review of VDT service in three years, at which time Petitioners could place their concerns on the record. The Commission's individual review of each proposed VDT system application and tariffs is well-balanced, as it provides the LECs with an opportunity to test new technologies and VDT services under known and effective sets of regulatory requirements, while it also provides consumers with safeguards that adequately protect their interests.

A Joint Board need not be convened for VDT service, in that the present regulations adequately provide for the introduction of new services and technologies. Neither the current Part 36 Rules, nor the LECs, automatically or arbitrarily assign the costs of VDT networks to either the intrastate or the interstate jurisdiction. The rules must remain technology and service neutral, just as VDT service must remain technology neutral.

The Uniform System of Accounts should not be changed to track VDT costs, because it is a financial reporting system conforming to generally accepted accounting principles. Neither should the price cap rules be changed, as the evolving and specialized nature of VDT do not require changes at this early juncture. The Commission's enhanced service rules are well-founded and should not be modified for non-regulated VDT services. Also, the present joint marketing and customer privacy rules will adequately protect consumers, because the VDT platform is a regulated service which must be provided on a nondiscriminatory basis. There is no sustainable rationale for undertaking a mammoth review of all these regulations at this time.

SNET recommends that the Petition for Rulemaking be denied. Pending Section 214 VDT Applications should not be held in abeyance. SNET believes that the Commission should continue to encourage the burgeoning VDT market its initiatives have stimulated, and should not get bogged down in the requested regulatory quagmire. The concerns of the Petitioners are more properly addressed during the Commission's scheduled review in three years.

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In the Matter of)
)
Amendments of Parts 32, 36, 61,) RM-8221

I. Introduction.

SNET encourages the Commission to maintain its vision of VDT, and to keep its initiatives moving forward. The spate of Section 214 VDT Applications, and the recent Commission approval of the Arlington trial,[2] are dynamic signs that the industry is forming initial approaches to the VDT marketplace. The Commission's broad public interest goals regarding advanced infrastructure, increasing competition and system diversity,[3] are just beginning to be realized.

SNET recommends that the Petition be denied.[4] Evolving VDT markets and technologies should not be bogged down at this early stage with sweeping examinations of the rules as proposed by the Petitioners. The Commission is properly encouraging the development of VDT systems, and has correctly

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[2] See In the Matter of the Application of The Chesapeake and Potomac Telephone Company of Virginia for Authority pursuant to Section 214 of the Communications Act of 1934, as amended, to construct, operate, own, and maintain facilities and equipment to test a new technology for use in providing video dialtone within a geographically defined area in northern Virginia, File No. W-P-C 6834, Order and Authorization, FCC 93-160, released March 25, 1993 (Arlington Order).

[3] "[T]elephone company involvement in the video marketplace ... will advance our overarching goals of creating opportunities to develop an advanced telecommunications infrastructure, increasing competition in the video marketplace, and enhancing the diversity of video services to the American public." In the Matter of Telephone Company-Cable Television Cross Ownership Rules, Sections 63.54-63.58, CC Docket No. 87-266, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, FCC 92-327, released August 14, 1992, 7 FCC Rcd 5781 (1992) (Report and Order, or R&O), paras. 1, 9, 25-31, 105.

[4] In the alternative, SNET strongly recommends that the Petition not be acted upon until the Commission undertakes its review of VDT in three years. See R&O, paras. 79, 96, 117, and Section IV., below.

stated that its current regulatory safeguards are adequate to

As an initial matter, this request must be denied outright. There is no reason to foreclose LECs from exercising their right to apply for authority to construct, operate and maintain VDT systems in accordance with the Commission's regulations. Petitioners have not demonstrated, with any legal precedent or other sustainable rationale, why a carrier should be denied its right to apply for the requisite authority to construct and operate a VDT system. The Commission has fully justified its reliance upon its widely-based safeguards to protect consumers,[8] including the telephone ratepayers CFA represents.

SNET filed a Section 214 Application with the Commission on April 27, 1993 for a trial video dialtone system. This Application was filed in full compliance with the Commission's rules and regulations, in trust and expectation that it would be reviewed according to the guidelines and principles the Commission set forth in the Report and Order.[9] As a matter of fairness and equity, the Commission should review SNET's and other LEC VDT Applications under the rules and guidelines in effect on the dates filed, not under a changed set of regulations that were not even officially proposed when the Applications were submitted.

SNET believes that, whether the Commission undertakes the rulemaking proceedings as requested by Petitioners or not, the Commission should not hold in abeyance any duly filed Section 214 Applications for VDT service.

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[8] See R&O, paras. 89-96.

[9] R&O, paras. 37-60, 79-96.

III. The Very Small Size Of VDT Trials Does Not Warrant A Wholesale Investigation Of The Rules.

The Petitioners request such a global investigation of every major section of the rules that a mammoth undertaking of this kind is hard to imagine. Petitioners request a generic overhaul of every section on which the Commission relies for oversight and regulation of the LEC industry.

This gigantic effort is simply not warranted at this time, given the minuscule size of the VDT trials. According to the Commission's statistics, 91,000,000 (91.0 million) households currently have telephone service in the United States.[10] However, the current VDT trials potentially apply only to a maximum of 54,000 (54 thousand) households, or only .059% of the nation's total telephone households.[11] SNET believes that the very modest VDT trials by only a few telephone companies do not warrant wholesale review of the rules now, as proposed by Petitioners.

IV. The Commission's Review Of Individual VDT Applications Will Adequately Protect Consumers.

The Commission properly concluded in the VDT Report and Order that "regulatory flexibility is key if video dialtone is

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10 See, "Telephone Subscribership In The United States," Industry Analysis Division, Common Carrier Bureau, March 1993, FCC News released April 2, 1993, Mimeo 32450, Table 1, page 6. See also, "Trends In Telephone Service," Industry Analysis Division, Common Carrier Bureau, FCC News released April 8, 1993, Mimeo 32451, Table 1, page 2.

11 Compare these very limited VDT systems to the vast penetration of cable television service which has increased to

to develop in accordance with market needs and technological innovations rather than according to Commission mandate."[12] The Commission has recognized the evolutionary nature of VDT, and was perceptive in anticipating "wide variation" in how LECs might chose to implement VDT.[13]

While recognizing and indeed encouraging the diversity of VDT technologies, the Commission has concluded, after ample consideration of a sizable record on this matter, that it would apply its comprehensive system of existing safeguards to protect consumers against any discrimination, anti-competitive conduct, or unlawful cross-subsidization, "for the initial implementation of video dialtone."[14] The Commission will review each Application to construct and operate a VDT platform,[15] and will also review terms and conditions of each proposed tariff.[16]

SNET strongly believes that these findings are proper and correct, especially when compared to the course the Petitioners would have the Commission follow. The Commission has committed itself to a full and complete review of video dialtone in three years -- a policy consistent with the price cap regulation when it was established.[17] This approach is

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12 R&O, para. 45 (footnote omitted).

13 R&O, paras. 60, 73, fn. 104.

14 R&O, para. 92 (emphasis added).

15 R&O, paras. 73, 89, fn. 231, para. 96; also, §63.54(d).

16 R&O, paras. 57, 89, 94.

17 In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, FCC 90-314, released October 4, 1990, 5 FCC Rcd 6786 (1990), at paras. 20, 385-394.

very well-balanced, as it provides the LECs with an opportunity to test new technologies and VDT services under known and effective sets of regulatory requirements, while it also provides consumers with safeguards that adequately protect their interests.

[redacted]

The rules must remain technology and service neutral, just as VDT service must remain technology neutral, which the Commission has correctly intended.[21]

The Commission, the public and the carriers do not have the resources necessary to review these complex rules every time a new service or technology evolves. Petitioners' appeal for a Joint Board, if granted, would potentially mire LECs' VDT designs and Applications in a regulatory morass, and block the Commission's initiatives and obligations to meet its public interest goals.

The Commission's planned review in three years is the appropriate forum for investigating any need for a Joint Board, as well as any other "long term issues which may or may not occur in the marketplace."[22]

VI. Consumers Are Adequately Protected Without Specific Video Dialtone Rules.

Petitioners request that VDT-specific regulations be adopted, arguing that the current cost allocation rules are inadequate, and that safeguards must be added to prevent cross subsidization of VDT by telephone ratepayers.[23]

SNET states that the current safeguards are adequate to protect consumers from the outcomes Petitioners fear. The Commission itself has described those safeguards in detail,

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21 See e.g., R&O, paras. 13, 45, 103; fn. 104.

22 R&O, Separate Statement of Commissioner Andrew C. Barrett, pg. 2.

23 Petition, pgs. 14-16.

and how the VDT offerings will not harm telephone ratepayers.[24]

Although SNET believes that the Petitioners' claims are based upon conjecture and are not substantiated by fact or evidence, SNET nevertheless comments briefly on each of the Petitioners' four recommendations.

A. Video Dialtone-Specific Cost Accounting Rules Should Not Be Adopted.

Petitioners state that the aggregation of video and telephone accounts will lead inevitably to cross-subsidization, and that "the fatal infirmity of the existing accounting rules" is that they provide no method for

that the company's financial records shall be kept in accordance with generally accepted accounting principles (GAAP).[27] The USOA should not be changed just to monitor the costs of VDT, or any other particular service or technology. To do so would be contrary to the foundation of USOA, as well as to the concepts of fairness and equity, as the services provided by NCTA's members are not accounted for in the very stringent ways NCTA proposes for the LECs.

SNET believes that a rewrite of the USOA chart of accounts just to accommodate VDT would not be an efficient use of the Commission's, the LECs' or the public's resources. Even if the Commission began the complex and sweeping investigations requested by the Petitioners now, it probably would not be completed before the start of the three year review. Further, all LECs might not offer VDT; for those that do, the Commission will most likely require that VDT be accounted for in such a way that ratepayers of other regulated services will not be burdened with the costs of VDT.[28]

B. Access Charge And Price Cap Rules Should Not Be Applied To Video Dialtone.

Petitioners request the establishment of a separate access charge category and price cap basket for VDT, due to the "specialized nature" of this service.[29]

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27 §32.12(a).

28 Arlington Order, para. 13.

29 Petition, pg. 18.

SNET believes that the Commission has properly settled this question, at least for the initial three-year VDT period, by stating that it is premature to alter the price cap structure, given the evolving nature of VDT.[30]

Similarly, the access charge regulations should not be changed to require VDT elements, as there is no standardized VDT rate plan as yet, nor may there ever be, due to the wide diversity of VDT systems, as encouraged and recognized by the Commission. More importantly, the common carrier nature of the VDT platform assures "unfettered access" on a nondiscriminatory basis to all program providers.[31]

SNET recommends that this request be dismissed, or at least deferred until the VDT review is undertaken.

C. No New Procedures Are Needed To Separate Costs Of Regulated And Non-Regulated VDT Services.

Petitioners state that the current cost allocation rules fail to separate video from telephone services, and that they fail to provide a mechanism for earmarking the costs of "enhanced" VDT functions.[32]

SNET states that the Commission's rules for separating and allocating costs between regulated and non-regulated services are in fact very effective, well defined and are working. The LECs' Cost Allocation Manuals (CAMs) are reviewed by the Commission and the public before carrier-proposed

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30 R&O, para. 91, fn. 274.

31 R&O, para. 44.

32 Petition, pg. 19.

changes are allowed to go into effect. New non-regulated services offered by a LEC must appear in the CAM, along with the quantification of allocations by cost pool, as well as with details on any affiliate transactions. The CAMs are audited by independent auditors under increasingly stringent Commission guidelines and workpaper reviews.[33]

SNET states that Petitioners' concerns that the current rules do not provide a mechanism for earmarking the costs of

D. Existing Joint Marketing And Customer Privacy Rules Adequately Protect Consumers.

Petitioners state that the Commission should adopt limitations on the joint marketing of basic telephony and VDT, and permit competing vendors to offer basic telephone service.[36]

SNET believes that any potential joint marketing of VDT and telephone services is well regulated by the existing rules. Although SNET has no plans to jointly market its VDT service with telephony, SNET does note that the VDT platform is a regulated common carrier service offered under tariff on a nondiscriminatory basis; VDT therefore has no particular advantage or disadvantage over other video facilities or services.

VII. Conclusion.

SNET concludes that the Petition for Rulemaking is premature and should be denied. The Commission's express intent to stimulate the evolution of VDT, while also individually reviewing each Application for VDT, is a reasonable regulatory approach at this time. The Commission should not hold in abeyance duly filed Section 214 Applications for VDT systems. The concerns of the Petitioners are more properly addressed during the Commission's scheduled review of VDT in three years. The Commission should not get

bogged down in the requested regulatory quagmire, but should continue to encourage the burgeoning VDT market.

Respectfully submitted,

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by: _____

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May 21, 1993

CERTIFICATE OF SERVICE

I, Melanie G. Raycroft, hereby certify that a copy of the foregoing Comments of The Southern New England Telephone Company in RM-8221 was hand delivered on this 21st day of May, 1993, to the parties listed below.

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